Supreme Court, U.S.
FILED

(1)

031623 MAY 27 2004

OFFICE OF

No. 03- ____

In the Supreme Court of the United States

JAMES L. HAUGEN,

Petitioner,

v.

HENRY COUNTY, et al.,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Georgia

PETITION FOR WRIT OF CERTIORARI

JAMES L. HAUGEN, ESQ.
Pro Se

409 OLD IVY PATH
MCDONOUGH, GA 30253
(404) 880-7180 (W)
(404) 880-7199 (F)
(770) 914-6595 (H)

Becker Gallagher Legal Publishing, Inc.
800.890.5001

QUESTIONS PRESENTED

1. Did the Supreme Court of Georgia deny Petitioner the right of due process by construing statutes with erroneous, omitted, and incomplete statutory language?

2. Did the Supreme Court of Georgia deny Petitioner the right of due process by replacing a statutory definition with a non-statutory definition sua sponte while overlooking the existing alternative definition provided by the General Assembly?

3. Did the Supreme Court of Georgia deny Petitioner the right of due process by addressing an abandoned issue and not the actual controversies?

4. As a result of the preceding defects of statutory construction, did the Supreme Court of Georgia impermissibly usurp the General Assembly's inherent taxation powers and violate the separation of powers guaranteed by the Georgia Constitution?

5. Has the Supreme Court of Georgia impaired the fairness, integrity, or public reputation of judicial proceedings by basing its Opinion on the preceding defects of statutory construction?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner is James L. Haugen, a citizen, resident, and taxpayer of Henry County, Georgia.

Respondents are the Board of Commissioners of Henry County, Georgia, the duly elected and qualified governing body of Henry County, Georgia; Henry County, a political subdivision of the State of Georgia, and Leland Maddox, Warren Holder, Gary Freedman, Jason Harper, Gerry Adams, and Lee Holman, each of whom stand individually and as a member of the Board.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THIS PETITION 7

1. The Court Denied Petitioner *Fundamental Fairness* And *Substantial Justice* By Construing Statutes With Erroneous, Omitted, And Incomplete Statutory Language 7

2. The Court Denied Petitioner *Fundamental Fairness* And *Substantial Justice* By Replacing A Statutory Definition Sua Sponte While Overlooking The Existing Alternative Definition Provided By The General Assembly 12

3. The Court Denied Petitioner *Fundamental Fairness* And *Substantial Justice* By Addressing

An Abandoned Issue And Not The Actual Controversies 14

4. The Court Impermissibly Usurped The General Assembly's Inherent Taxation Powers And Violated The Separation Of Powers Guaranteed By the Georgia Constitution By Construing Taxation Statutes On Erroneous, Omitted, Incomplete, and Overlooked Language 16

5. The Court Has Impaired The Fairness, Integrity, Or Public Reputation Of Judicial Proceedings By Construing Statutes Based On Erroneous, Omitted, Incomplete, And Overlooked Statutory Language 18

CONCLUSION 18

APPENDIX

Appendix A
Haugen v. Henry County, et al.,
Denial of the Motion for Reconsideration by the Supreme Court of Georgia,
Dated April 14, 2004 . . . . . 1a

Appendix B
Haugen v. Henry County, et al.,
Majority Opinion of the Supreme Court of Georgia,
Dated March 1, 2004 . . . . . 2a

Appendix C
Haugen v. Henry County, et al.,
Dissenting Opinion of the Supreme Court of Georgia 8a

Appendix D
Haugen v. Henry County, et al.,
Henry County's Proposed Order Granting Judgment
As A Matter Of Law In Favor Of Defendants 12a

TABLE OF AUTHORITIES

Cases

Dickey v. Storey, 262 Ga. 452 (1992) . . . 5, 7, 15, 17

Gearinger v. Lee, 266 Ga. 167 (1996) 10

Haugen v. Henry County, No. A03A1444, 2004 WL 370216, 594 S.E.2d 324 (Ga. 2004) 1

Statutes

28 U.S.C. § 1257 1

OCGA* § 1-3-1(a) 7, 9, 13

OCGA § 9-6-28 16

OCGA § 48-8-110 et seq 3

OCGA § 48-8-111(a)(3) 7, 12, 13, 14, 16

OCGA § 48-8-121(a)(1) 4, 5, 7, 15

OCGA § 48-8-121(g) 4, 12

OCGA § 48-8-121(g)(1)(B) . . . . . *passim*

OCGA § 48-8-121(g)(2) . . . . . *passim*

1994 Ga. Laws 1668 et seq. 7

1994 Ga. Laws 1670-72 12

Constitutional Provisions

U.S. Constitution, Amendment XIV 1

Georgia Constitution, Art. I, § I 2, 17

---

* Official Code of Georgia Annotated.

Georgia Constitution, Art. I, § II 2, 17

Georgia Constitution, Art. III, § I 2, 17

Georgia Constitution, Art. VII, § III 2, 17

Rules

2A Fed. Proc., L. Ed. § 3:861 18

Other

Black's Law Dictionary 563 (7th Ed.) 5

The New Oxford Dictionary (2001) 9

OPINIONS BELOW

The published opinion of the Supreme Court of Georgia is dated March 1, 2004, and the majority and dissenting opinions are produced herein as Appendixes B and C, respectively.[1] The unpublished judgment of the superior court dated March 31, 2003 is reproduced in Appendix D.

STATEMENT OF JURISDICTION

This petition seeks to have reviewed in the 4-3 decision of Division 2 of the judgment entered on March 1, 2004[2] and the 4-3 decision on April 14, 2004 denying Petitioner's timely Motion for Reconsideration. A copy of the Court's denial is reproduced in Appendix A.

This court has certiorari jurisdiction over this case under 28 U.S.C. § 1257.[3]

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST. amend. XIV, § 1 provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person

---

[1] The opinion is published as Haugen v. Henry County, No. A03A1444, 2004 WL 370216, 594 S.E.2d 324 (Ga. 2004).

[2] The Supreme Court of Georgia unanimously held for Petitioner in Division 1.

[3] The Supreme Court of Georgia is the highest court of the State of Georgia in which a decision could be had.

of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

GA. CONST. Art. I, § I, ¶ I provides:

No person shall be deprived of life, liberty, or property except by due process of law.

GA. CONST. Art. I, § II, ¶ III provides:

The legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided.

GA. CONST. Art. III, § I, ¶ I provides:

The legislative power of the state shall be vested in a General Assembly which shall consist of a Senate and a House of Representatives.

GA. CONST. Art. VII, § III, ¶ I(a) provides:

Except as otherwise provided in this Constitution, the power of taxation over the whole state may be exercised for any purpose authorized by law. . . .

STATEMENT OF THE CASE

In 1996, voters in Henry County, Georgia approved the imposition of a sales tax in a referendum called for by Respondents in Resolution No. 96-14 (hereinafter, "Resolution"). The tax, commonly known as the Special

Purposes Local Option Sales Tax (hereinafter, "SPLOST"), is authorized by OCGA § 48-8-110 et seq. The tax intended to raise a maximum amount of $60 million for the purposes of road, streets, and bridge construction projects (hereinafter, "roads purposes") and specific capital outlay projects.

The tax received net proceeds in the amount of $71.8 million which is $11.8 million in excess of the maximum amount. Interest had accrued in the amount of $4.6 million through May 30, 2002, and the total amount in the SPLOST budget was $76.4 million. Approximately $60 million had been spent and/or encumbered from funds in the SPLOST account on October 22, 2002, approximately three months after the instant case was initiated. The issue of this instant case involves Respondents' use of the $11.8 million of "excess proceeds" only and not the accrued interest.

There are two measurements of "excess proceeds" defined in OCGA § 48-8-121(g)(1)(B): the "maximum cost measurement" and the "actual cost measurement." Under the maximum cost measurement, "excess proceeds" exist when the county receives net proceeds "in excess of the maximum cost of the project or projects stated in the resolution. . . ." OCGA § 48-8-121(g)(1)(B). Under the actual cost measurement, "excess proceeds" exist when the county receives net proceeds "in excess of the actual cost of such project or projects." "Excess proceeds" currently exist under the maximum cost measurement because Respondents have received $11.8 million in excess of the maximum cost of $60 million. "Excess proceeds" will not exist under the actual cost measurement because the actual cost of projects would consume all of the net proceeds according to affidavits filed by Respondents.

In a mandamus action, Petitioner sought (and still seeks) to compel Respondents to use the "excess proceeds" pursuant to two separate provisions of OCGA § 48-8-121. First, "excess proceeds shall . . . be paid into the general fund of the county. . . ." OCGA § 48-8-121(g)(2). Petitioner sought to have Respondents pay the "excess proceeds" of $11.8 million into the general fund of the county. Second, proceeds "shall be used by the county exclusively for the *purpose* or purposes specified in the *resolution*. . . ." OCGA § 48-8-121(a)(1) (emphasis added). Petitioner sought to have Respondents use the "excess proceeds" for the exclusive purpose stated in the Resolution pursuant to OCGA § 48-8-121(a)(1), where Paragraph 8 of the Resolution states, in part, that "excess proceeds shall . . . be paid into the general funds of the county and shall be used for the purpose of reducing ad valorem taxes." (Emphasis in original). Respondents have not complied with either statutory duty; instead, Respondents have budgeted the "excess proceeds" for additional SPLOST projects from the SPLOST account. The trial court determined that Petitioner's claims failed as a matter of law and entered judgment in favor of Respondents. See App. D at 20a.

On direct appeal to the Supreme Court of Georgia, Petitioner presented Respondents' duties under OCGA §§ 48-8-121(g) and -121(a)(1) as separate issues. In one enumeration of error, Petitioner stated that the trial court failed to correctly construe OCGA § 48-8-121(g)(1)(B) and -(g)(2) by finding there was no duty for Respondents to pay the "excess proceeds" to the general fund of the county. In another, Petitioner stated that the trial court failed to correctly construe OCGA § 48-8-121(a)(1) by finding there was no duty for Respondents to use "excess proceeds" exclusively for the purpose stated in the Resolution. In another, Petitioner presented an issue involving the applicability or relevancy of

Dickey v. Storey, 262 Ga. 452 (1992) with respect to "excess proceeds" and the fact that the language of OCGA § 48-8-121(a)(1) refers to *purposes* – not *projects*. See App. B at 6a. The Court affirmed the judgment of the trial court without addressing any of these issues. See App. B at 7a.

The Court correctly identified the two measurements of "excess proceeds" defined by statute: the maximum cost measurement and the actual cost measurement. App. at 4a. The Court also acknowledged that "excess proceeds" currently exist under the maximum cost measurement but not the actual cost measurement. See id. However, the Court switched sua sponte the maximum cost measurement with an "estimated cost" measurement although this was never advocated by Respondents nor subjected to Petitioner's scrutiny. Id. After shifting its focus to the estimated cost measurement, the Court held that "there can be no 'excess' SPLOST proceeds so long as revenue is available and the projects specified in the resolution imposing the tax have not been completed." App. B at 6a-7a. The Court has held that the maximum cost measurement does not apply where the actual cost measurement of "excess proceeds" has not been met, and that both conditions must be met before "excess proceeds" exist.

In reaching this holding, the Court committed many "plain errors"[4] in the application of its statutory construction methodology. As the remainder of this Petition will demonstrate, **the Court construed the statutes using**

---

[4] "Plain errors" is defined herein as errors so obvious and substantial that the Court's failure to correct them on Motion for Reconsideration has infringed on Petitioner's due-process rights and damaged the integrity of the judicial process. See BLACK'S LAW DICTIONARY 563 (7th Ed.).

erroneous, omitted, incomplete, and overlooked statutory language. By using erroneous language, the Court failed to construe the correct language of the statute. By omitting language, the Court failed to consider the *actual expressed intent* of the General Assembly for the use of "excess proceeds." By providing incomplete language, the Court failed to consider a salient "if-then" condition which changed the context of the statute under review from one of choice to one of condition. By overlooking language, the Court failed to consider the alternative statutory definition of "maximum cost" when it switched to "estimated cost." Although the Court purports to discuss legislative intent, the Court failed to consider the intent of a legislative bill enacted just two years before the SPLOST of the instant case – a bill that amended the very language of the statutes being construed. See generally App. B at 4a-7a.

The statutory construction methodology employed by the highest court in the State of Georgia has denied Petitioner his constitutional right of due process, i.e., fundamental fairness and substantial justice. Petitioner has been denied due process because the holding of the Court was based on the following:

First, OCGA § 48-8-121(g)(2) was construed using erroneous and omitted statutory language. See App. B at 4a.

Second, OCGA § 48-8-121(g)(1)(B) was construed with incomplete statutory language, omitting the salient "if-then" condition that changes the entire context of the statute. See id.

Third, the maximum cost measurement of "excess proceeds" in OCGA § 48-8-121(g)(1)(B) was replaced with the estimated cost measurement by the Court sua sponte

without consideration given to the existing alternative definition provided in OCGA § 48-8-111(a)(3), which the Court omitted from consideration. See id. at 4a-7a.

Fourth, there was no discussion of House Bill 1704 ("HB 1704") – a bill enacted in 1994 that directly impacted the very language of OCGA §§ 48-8-111(a)(3) and -121(g)(1)(B) under construction – although "[i]n all interpretations of statutes, the courts shall look *diligently* for the intention of the General Assembly. . . ." OCGA § 1-3-1(a) (emphasis added); see 1994 Ga. Laws 1668 et seq.

Finally, the 1992 holding of Dickey was not accurately reconciled with "excess proceeds" because the Court failed to use correct and complete statutory language in its construction of OCGA §§ 48-8-121(a)(1), -121(g)(1)(B), and -121(g)(2) and failed to consider the 1994 amendments of HB 1704.

The constitutional issues of the preceding plain errors were first raised as questions of fundamental fairness, substantial justice, separation of powers, and the fairness, integrity, or public reputation of judicial proceedings in Petitioner's Motion for Reconsideration. The Court denied reconsideration without comment in a 4-3 decision. App. A at 1a.

REASONS FOR GRANTING THIS PETITION

1. The Court Denied Petitioner *Fundamental Fairness* And *Substantial Justice* By Construing Statutes With Erroneous, Omitted, And Incomplete Statutory Language.

Code Section 48-8-121(g)(2) states, in relevant part, that "excess proceeds shall next be paid into the general fund of

the county, it being the intent that any funds so paid into the general fund of the county be used for the purpose of reducing ad valorem taxes." The Court stated that "OCGA § 48-8-121(g)(2) provides, in relevant part, that the County can use such proceeds *only* to reduce ad valorem taxes. App. B at 4a (emphasis added). **This was erroneous**.

The significance of this error is prejudicial. Appearing in the first paragraph of Division 2, it sets the direction for the remainder of the Opinion. Just two sentences later at the end of the first paragraph, the Court framed the issue based on this false foundation. See id. The discussion that follows in the Opinion only magnifies the error. Determinations regarding "excess proceeds" and legislative intent have been founded on this mistake, and the conclusion is rooted in a defective premise.

The significance of this misstatement is equally prejudicial for the discussion that does not occur. The Court omitted from its discussion the following language of OCGA § 48-8-121(g)(2): "*excess proceeds shall* next be paid into the general fund of the county, it being the *intent* that any funds so paid into the general fund of the county. . . ." (Emphasis added). There are two factors here that further exacerbate the inequity against the Petitioner.

First, the legislature's mandate of the use of "excess proceeds" is clear and unambiguous, i.e., a payment to the general fund is required. See App. B at 6a (noting the term "shall" is a clear and unambiguous term). Because it was not disclosed, the clear mandate to pay "excess proceeds" into the general fund was not discussed. Moreover, this was precisely one of the controversies presented to the Court on appeal that was not resolved.

Second, the Court has a responsibility to look *diligently* for the intent of the General Assembly. See OCGA § 1-3-1(a). However, the very phrase in which the General Assembly expressed its intent of "excess proceeds" does not appear. The Court has purported to ascertain legislative intent of the "excess proceeds" yet it fails to disclose the very sentence where "excess proceeds" and intent appear together. See App. B at 5a-7a. By omitting the "general fund" and "intent" language from OCGA § 48-8-121(g)(2), the Court has denied the diligence (or process) due Petitioner.

The Court has also been unfair and unjust to Petitioner by missing the salient language of OCGA § 48-8-121(g)(1)(B). Code Section 48-8-121(g)(1)(B) states, in whole, the following:

> *If* the county receives from the tax net proceeds in excess of the maximum cost of the project or projects stated in the resolution or ordinance calling for the imposition of the tax or in excess of the actual cost of such project or projects, *then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.* (Emphasis added).

The Court has omitted the conjunction "if" that precedes the conjunction "or." See App. B at 4a. The natural meaning of "if" is "introducing a conditional clause: on the condition or supposition that; in the event that. . . ." The New Oxford Dictionary (2001). Thus, the Court failed to disclose a term that changes the context of the statute from one being phrased as a *connective* (marking a *choice*) to one being phrased in the *disjunctive* (marking a *condition*). Instead, the Court determined that Respondents have a choice between the maximum cost measurement of "excess

proceeds" and the actual cost measurement without any conditions. See App. B at 4a.

Petitioner has been judged without consideration given to the "if-then" disjunctive phrasing and the term "shall." Had these been considered, the Court would have shifted its discussion to determine whether the "if-then" condition triggers a condition upon which the legislature clearly subjects and applies "excess proceeds" to the payment to the general fund of the county. Thus, the Opinion lacks the minimal contextual accuracy because the context of a condition preceding a clear legislative mandate is neither disclosed nor discussed.

Petitioner has been prejudiced by the Court's narrowing of the conjunction "or" to mean only a choice or an election to do one of two things. See infra App. B at 4a (citing Gearinger v. Lee, 266 Ga. 167 (1996)). This is contrary, however, to the actual holding of Gearinger where the use of "or" was held to be in the disjunctive. "While the word 'or' can be interpreted either as a disjunctive term or as a reiterative term, where a legislative provision is phrased in the disjunctive, *it must be so construed* absent a clear indication that a disjunctive construction is contrary to the legislative intent." Gearinger at 169 (emphasis added) (internal citation omitted).

In the instant case, the use of "or" clearly takes the form of a disjunctive as it falls within the "if-then" condition. The Court's selectivity of just one sentence from the unanimous holding of Gearinger is detrimental against Petitioner in its application. It has foreclosed Petitioner's opportunity to have his position judged on the complete holding of compelling precedent.

In its discussion of "or," the Court stated "the General Assembly anticipated that, on occasion, actual cost would be the applicable standard for determining 'excess proceeds'." App. B at 5a. When this rationale is applied more fully, however, there will never be a time when the "actual cost" measurement does not apply. If the proceeds in excess of the maximum amount must be used to complete projects, then the "maximum cost" measurement will never be determinative of "excess proceeds."

Additionally, the General Assembly did not use the conjunction "and." The Court, however, has effectively replaced it for "or." Because "excess proceeds" currently exist under the "maximum cost" measurement, the Court has concluded that "excess proceeds" will not exist until both the "maximum cost" *and* "actual cost" measurements have been met. Clearly, the General Assembly chose the conjunction "or" - not "and."

Overall, it has been unfair and unjust for Petitioner to be judged on erroneous, omitted, and incomplete statutory language. It is unfair because Petitioner should be judged on what the statutes actually state and not what the Court misstates. It is also unjust because the Court should know and understand the actual and complete language of the statutes being construed; at minimum, the Court should have demonstrated an awareness of the actual language being construed to provide the most basic form of justice. Because fundamental fairness and substantial justice have not been afforded to Petitioner, due process has been denied.

2. The Court Denied Petitioner *Fundamental Fairness* And *Substantial Justice* By Replacing A Statutory Definition With A Non-Statutory Definition Sua Sponte While Overlooking The Existing Alternative Definition Provided By The General Assembly.

The Court replaced the maximum cost measurement of "excess proceeds" with the estimate cost measurement. "The determinative factors are the *estimated* and *actual* costs of the project." App. B. at 4a (emphasis added). This new definition was created sua sponte, for it had not been advocated by the Respondents nor subjected to Petitioner's scrutiny. The Court failed to consider the alternative definition already provided by General Assembly in OCGA § 48-8-111(a)(3): "[t]he maximum cost of the project or projects which will be funded from the proceeds of the tax, which *maximum cost shall also be the maximum amount of net proceeds to be raised by the tax*." (Emphasis added). The Court missed the determinative fact that maximum cost measurement is the same as "the maximum amount of net proceeds to be raised by the tax."

Adding to the unfairness against Petitioner was the Court's failure to consider HB 1704 and the intent of the General Assembly when it amended the very provisions at issue in 1994. Sections 3 and 6 of HB 1704 removed a "roads purposes" exception. See 1994 Ga. Laws at 1670-72. Prior to 1994, the maximum amount and maximum cost provisions of these statutes were not applicable if funds were used in whole or in part for roads purposes. See OCGA 48-8-111(a)(3) (1993); OCGA § 48-8-121(g) (1993). This meant that there was no set maximum amount of net proceeds to be raised by the tax and no maximum cost measurement of "excess proceeds" if proceeds were used for roads purposes.

After 1994, the maximum amount and maximum cost provisions were made applicable *for all purposes without exception*. Accordingly, "excess proceeds" under the maximum cost measurement came into existence in 1994 and *just two years prior to the SPLOST of the instant case*.

The Court has failed to "look *diligently* for the intention of the General Assembly" in 1994. OCGA § 1-3-1(a) (emphasis added). The overlooked definition and the Court's failure to recognize the legislative intent of HB 1704 have prejudiced the Petitioner. Had the Court considered the alternative definition established in 1994, the simplicity of "excess proceeds" within the totality of the SPLOST would have come into view. As a result of HB 1704, the county determines a *maximum amount* through estimates – and *not an estimated amount of costs*. Cf. App. B at 4a-7a. This *maximum amount of net proceeds to be raised by the tax* is also *the maximum cost of projects which will be funded*. Net proceeds collected above the maximum amount to be raised are "excess" and defined in OCGA § 48-8-121(g)(1)(B) as "excess proceeds." As "excess proceeds," amounts above the maximum amount to be raised must be paid to the general fund of the county pursuant to OCGA § 48-8-121(g)(2), where the county may spend such proceeds from the general fund in any lawful manner. The legislature recommended that the county use such proceeds to reduce ad valorem taxes but held short of mandating such use, thereby allowing the county discretionary use of such proceeds from the general fund only. Clearly, the totality of the SPLOST reveals the simplicity of "excess proceeds."

The Court's sua sponte action of creating a third definition to measure "excess proceeds" while failing to consider the existing alternative definition of OCGA § 48-8-111(a)(3) has been prejudicial to Petitioner. Had the Court considered

either the alternative definition of OCGA § 48-8-111(a)(3) or the intent behind HB 1704, the Court would have realized that the construction of these statutes "square with common sense and sound reasoning." Cf. App. B at 5a. The Court would have also realized that the payment of "excess proceeds" into the general fund of the county is merely the means with which the General Assembly limits the county's power to spend on additional SPLOST projects from the SPLOST account. Clearly, this does not "result in unreasonable consequences or absurd results not contemplated by the legislature." Cf. App. B at 7a.

Because the Court overlooked the existing alternative definition and failed to look for the intent of the General Assembly behind HB 1704, Petitioner has been denied due process. It was fundamentally unfair because Petitioner should have been judged on those definitions appearing in statute as intended by the General Assembly before the Court resorted to creating another definition sua sponte. It was also substantially unjust because Petitioner has been judged without the Court considering the intent of the General Assembly in 1994 and just two years prior to the SPLOST of the instant case.

3. The Court Denied Petitioner *Fundamental Fairness* And *Substantial Justice* By Addressing An Abandoned Issue And Not The Actual Controversies.

The Court addressed an abandoned issue and not the actual controversies. Petitioner did not present on appeal the issue that "pursuant to OCGA § 48-8-121(g)(1)(B) and (g)(2), any 'excess proceeds' must be used to reduce ad valorem taxes." App. B at 3a. Petitioner abandoned this issue after the instant case was initiated in 2002. The Court, however,

continued with the issue by erroneously stating that "OCGA § 48-8-121(g)(2) provides, in relevant part, that the County can use such excess proceeds only to reduce ad valorem taxes." App. B at 4a. In addition, the Court omitted the statutory language where "excess proceeds shall next be paid into the general fund of the county[.]" OCGA § 48-8-121(g)(2). The Court also omitted the "if-then" conditional phrasing and the imperative "shall" from OCGA § 48-8-121(g)(1)(B). See id. By the end of the first paragraph of Division 2, the Court had redefined the issue premised with erroneous, omitted, and incomplete statements of statutory language. See id. The Opinion was formed on these misstatements of law.

The actual controversies were not addressed on appeal. As enumerated in one error, the Court did not address the merits that "excess proceeds shall next be paid into the general fund of the county[.]" OCGA § 48-8-121(g)(2). As enumerated in another, the Court did not address the merits that proceeds to be used "exclusively for the purpose or purposes specified in the resolution[,]" where "excess proceeds" had an exclusive purpose specified in Paragraph 8 of the Resolution. OCGA § 48-8-121(a)(1); see App. B at 6a (noting that "'exclusively' and 'purpose or purposes specified' are clear and unambiguous terms"). As enumerated in another, the Court did not address whether the 1992 holding of Dickey was applicable or relevant to "excess proceeds" after HB 1704 was enacted in 1994.

The Court addressed and resolved a moot issue instead of the actual controversies. This is fundamentally unfair to Petitioner because the Court has judged him on a non-existent issue. Also, the Court has been substantially unjust to Petitioner by not addressing the actual controversies, especially when this was Petitioner's only opportunity for

appellate review in Georgia. See OCGA § 9-6-28 (authorizing direct appeal to the Supreme Court of Georgia for a mandamus action instead of intermediate appeal to the Court of Appeals of Georgia). Because fundamental fairness and substantial justice have been denied, due process has been denied.

4. The Court Impermissibly Usurped The General Assembly's Inherent Taxation Powers And Violated The Separation Of Powers Guaranteed By The Georgia Constitution By Construing Taxation Statutes On Erroneous, Omitted, Incomplete, and Overlooked Language.

"The maximum cost of the project or projects which will be funded from the proceeds of the tax, which maximum cost shall also be the maximum amount of net proceeds to be raised by the tax." OCGA § 48-8-111(a)(3). This single sentence sets the limits of a county's power to tax and its power to spend. The power to tax is limited by *the maximum amount of net proceeds to be raised by the tax*. The power to spend is limited by *the maximum cost of the project or projects*, for this is the maximum cost measurement of "excess proceeds" stated in OCGA § 48-8-121(g)(1)(B).

When taking into account the totality of SPLOST, OCGA §§ 48-8-111(a)(3), -121(g)(1)(B), and -121(g)(2) provide the means with which the General Assembly in Georgia limits a county's power to tax and its power to spend. By overlooking OCGA § 48-8-111(a)(3), the Court did not consider the power to tax and the power to spend limitations placed upon the Respondents. By providing an incomplete statement of OCGA § 48-8-121(g)(1)(B), the Court did not recognize that the "if-then" condition was the General Assembly's method to limit the Respondents' power to spend the net proceeds

collected above the maximum amount of $60 million. By failing to state the correct and complete language of OCGA § 48-8-121(g)(2), the Court did not address the mandate that Respondents pay the "excess proceeds" of $11.8 million to the general fund of the county. By failing to address the legislative intent of HB 1704 in 1994, the Court did not recognize the maximum amount and maximum cost measurement of "excess proceeds" were new limitations upon Respondents' power to tax and power to spend which theretofore did not apply if proceeds were used for "roads purposes." The Court, instead, derived legislative intent from its own holding of the 1992 case of Dickey – a case decided two years before the General Assembly incorporated the taxation limits of HB 1704. See App. at 6a.

By construing taxation statutes on erroneous, omitted, incomplete, and overlooked language, the Court has impermissibly usurped the General Assembly's taxation power and violated the separation of powers guaranteed by the Georgia Constitution. See GA. CONST. Art. I, § II, ¶ III; see also III, § I, ¶ I & Art. VII, § III, ¶ I(a). The Court's holding empowers Respondents to spend beyond the maximum amount of $60 million where no power previously existed. The General Assembly did not grant Respondents the power to spend beyond the upper limit of $60 million. For the Court to hold otherwise usurps the taxation power of the General Assembly and violates the separation of powers guaranteed by the Georgia Constitution.

5. The Court Has Impaired The Fairness, Integrity, Or Public Reputation Of Judicial Proceedings By Construing Statutes Based On Erroneous, Omitted, Incomplete, And Overlooked Statutory Language.

This Court has addressed questions of public importance such as those relating to judicial administration. "The Supreme Court can determine issues of judicial administration which seriously affect the fairness, integrity, or reputation of public judicial proceedings." 2A Fed. Proc., L. Ed. § 3:861.

This Court should review the 4-3 decision of Division 2 of the judgment because the formation of a judgment based on erroneous, omitted, incomplete, and overlooked statutory language – along with the Court's failure to examine HB 1704 for legislative intent – seriously undermines the fairness, integrity, and reputation of the highest court in the State of Georgia.

CONCLUSION

Petitioner respectfully requests that this Court grant the writ.

Respectfully submitted,

James L. Haugen, Esq.
Pro Se
409 Old Ivy Path
McDonough, GA 30253
(404) 880-7180 (work)
(404) 880-7199 (facsimile)
(770) 914-6595 (home)

APPENDIX A

SUPREME COURT OF GEORGIA

Case No. S03A1444

Atlanta, April 14, 2004

JAMES L. HAUGEN, Plaintiff,

v.

HENRY COUNTY, et al., Defendants.

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Sears, P.J., Thompson and Hines, JJ. who dissent.

APPENDIX B

SUPREME COURT OF GEORGIA

Case No. S03A1444

[Decided March 1, 2004]

HAUGEN,)
Plaintiff,)
)
v.)
)
HENRY COUNTY et al.)
Defendants.)
)

CARLEY, Justice.

In September of 1996, the voters of Henry County passed a referendum authorizing the imposition of a Special Purpose Local Option Sales Tax (SPLOST) for a period of five years. The tax was intended to raise not more than $60 million for road and street repair, as well as for specified capital projects. During the five-year period, the tax generated more than $71.8 million in revenue. Although $60 million was spent for the stated purposes, certain of the projects remained incomplete. When the County proposed to expend the additional SPLOST funds on the unfinished projects, James L. Haugen, who is a resident and taxpayer of the County, instituted an action seeking mandamus and injunctive relief.

He alleged that, pursuant to OCGA § 48-8-121 (g) (1) (B) and (g) (2), any "excess proceeds" must be used to reduce ad valorem taxes.

The County moved to dismiss and the trial court granted the motion on procedural and on substantive grounds. It found that Haugen had failed to comply with OCGA § 9-6-27 (a), because no mandamus nisi was granted and served on the County. It also concluded that there were no "excess proceeds" as defined by OCGA § 48-8-121 (g) (1) (B) and (g) (2). Haugen appeals from the order of the trial court dismissing all claims against the County.

1. Under OCGA § 9-11-4 (k), "ordinary process" may be used in a mandamus action as an alternative method of service to that authorized by OCGA § 9-6-27 (a). DeKalb County v. Chapel Hill, 232 Ga. 238, 239 (1) (205 S.E.2d 864) (1974). Thus, Haugen's failure to comply with OCGA § 9-6-27 (a) is immaterial, because he served the County in the ordinary manner. The County's reliance on OCGA § 9-11-81 is misplaced, since OCGA § 9-6-27 (a) complements, rather than conflicts with OCGA § 9-11-4 (k), which expressly establishes that

> [t]he methods of service provided in this Code section may be used as alternative methods of service ... in any other special statutory proceedings ... and, in any such proceeding, service shall be sufficient when made in accordance with the statutes relating particularly to the proceeding or in accordance with this Code section.

See In the Matter of: Inquiry Concerning a Judge, 265 Ga. 326, 329 (2) (454 S.E.2d 780) (1995) (using OCGA § 9-6-27

as the alternative to OCGA § 9-11- 4). Accordingly, the trial court erred in dismissing the action on procedural grounds.

2. The tax was in effect for the full five-year period. See Jackson v. Shadix, 272 Ga. 631, 632 (1) (533 S.E.2d 706) (2000) (construing former OCGA § 48-8-112, which is controlling here as well). However, Shadix did not concern and, thus, is not dispositive of, the substantive issue of statutory construction that is presented here. Under OCGA § 48-8-121 (g) (1) (B), the taxing authority receives excess net SPLOST proceeds to the extent that the revenue obtained is "in excess of the maximum cost of the project or projects stated in the resolution ... or in excess of the actual cost of such project or projects ...." OCGA § 48-8-121 (g) (2) provides, in relevant part, that the County can use such excess proceeds only to reduce its ad valorem taxes. The maximum cost of the projects stated in the SPLOST resolution was $60 million, but the actual cost of the projects exceeds that amount. Accordingly, the issue to be decided is whether the County is entitled to use the $11.8 million plus accrued interest to complete the projects before it can be charged with possessing any "excess" SPLOST proceeds.

"The natural meaning of 'or,' where used as a connective, is "'to mark an alternative and present choice, implying an election to do one of two things ....'" [Cit.]" Gearinger v. Lee, 266 Ga. 167, 169 (2) (465 S.E.2d 440) (1996). Thus, OCGA § 48-8-121 (g) (1) (B) provides that SPLOST proceeds are considered to be "excess" either when they are greater than the cost of the project specified in the resolution or when they are greater than the actual cost of the project. The determinative factors are the estimated and the actual costs of the project. However, the statute does not expressly provide which alternative applies where, as here, the net tax proceeds exceed the estimated, but not the actual, cost of the project.

The dissent simply assumes that, because the General Assembly used the word "or" to separate the two alternatives, whichever cost is the lesser would control, with the result that the estimated cost establishes the maximum amount of SPLOST revenue that can be expended on the project. As soon as the tax proceeds reach an amount equal to the estimated cost, all additional proceeds are deemed excess. Thus, according to that interpretation, once the County raised the $60 million specified in the resolution, all further SPLOST revenues were excess even though the projects had not been completed.

There is nothing in the statute to support the conclusion that the estimated cost invariably controls over the actual cost. By using the word "or," the General Assembly anticipated that, on occasion, actual cost would be the applicable standard for determining "excess proceeds." The construction of the statute advanced by the dissent leads to the anomalous result that the County cannot use available SPLOST revenues to complete those very projects for which the tax was expressly proposed, approved and imposed. However, one of the cardinal rules of statutory construction requires the courts to "consider the consequences of any proposed interpretation and not construe the statute to reach an unreasonable result unintended by the legislature. [Cit.]" Trust Co. Bank v. Ga. Superior Court Clerks' Cooperative Auth., 265 Ga. 390 (1) (456 S.E.2d 571) (1995). "'"The construction (of statutes) must square with common sense and sound reasoning."' [Cit.]" Thornton v. Clarke County School Dist., 270 Ga. 633, 634 (1) (514 S.E.2d 11) (1999). Moreover, "[l]anguage in one part of the statute must be construed in light of the legislature's intent as found in the whole statute. [Cit]" Echols v. Thomas, 265 Ga. 474, 475 (458 S.E.2d 100) (1995). OCGA § 48-8-121 (g) (1) (B) does not exist in isolation. OCGA § 48-8-121 (a) (1) expressly provides that "[t]he

proceeds received from the tax authorized by this article shall be used by the county exclusively for the purpose or purposes specified in the resolution or ordinance calling for imposition of the tax." "Shall," "exclusively" and "purpose or purposes specified" are all clear and unambiguous terms. Thus, to satisfy the mandatory requirement imposed by OCGA § 48-8-121 (a) (1), the taxing authority must necessarily use all SPLOST proceeds to complete the projects for which the tax was imposed, before any revenue derived from the tax can be deemed to be "excess" and available for use in connection with another purpose. The County

> is bound ... to complete all projects ... unless circumstances arise which dictate that projects which initially seemed feasible are no longer so. In this regard the governing authority has discretion to make adjustments in the plans for these projects, but may not abandon the projects altogether.

Dickey v. Storey, 262 Ga. 452, 456 (3) (423 S.E.2d 650) (1992). Therefore, as a matter of law, there can be no "excess" SPLOST proceeds so long as revenue is available and the projects specified in the resolution imposing the tax have not been completed.

Accordingly, the only construction of OCGA § 48-8-121 (g) (1) (B) which comports with sound reasoning and the entirety of the statute of which it is a part is that the actual cost, rather than estimated cost, establishes the maximum amount of SPLOST revenue that can be expended. While estimated "or" actual cost are the applicable standards for determining "excess proceeds," on those occasions when actual cost exceeds estimated cost, actual cost is the determinative standard. Thus, even though the tax proceeds received by the taxing authority may exceed the estimated cost

of any given unfinished project, no "excess" proceeds exist so long as the project remains incomplete. To hold otherwise would render OCGA § 48-8-121 (a) (1) meaningless and sanction the unnecessary abandonment of projects based upon a good-faith, but incorrect estimate as to the effect of inflation or other variables on the actual cost to complete them.

The judiciary has the duty to reject a construction of a statute which will result in unreasonable consequences or absurd results not contemplated by the legislature. General Electric Credit Corp. of Ga. v. Brooks, 242 Ga. 109, 112 (249 S.E.2d 596) (1978). The General Assembly did not intend that a taxing authority be precluded from expending available SPLOST proceeds on unfinished projects simply because the original estimate of the cost of completion was too low. The trial court correctly interpreted the relevant statutory provisions and, therefore, properly dismissed Haugen's petition on substantive grounds.

Judgment affirmed. All the Justices concur, except Sears, P. J., Thompson and Hines, JJ., who dissent.

APPENDIX C

SUPREME COURT OF GEORGIA

Case No. S03A1444

[Filed March 1, 2004]

HAUGEN, Plaintiff,

v.

HENRY COUNTY, et al., Defendants.

HINES, Justice, dissenting.

I agree with Division 1 of the majority opinion that OCGA § 9-11-4 (k) permits ordinary process as a means of service in a mandamus action. However, I respectfully dissent to the holding in Division 2 that the superior court properly dismissed the taxpayer's petition on substantive grounds. The superior court erred in its application of OCGA § 48-8-121(g)(1)(B) to find that taxpayer Haugen's claims failed as a matter of law.

The pivotal question in this case is whether the $11.8 million in net tax revenues, collected over and above the $60 million amount specified in both the authorizing resolution and the referendum voted on by the taxpayers of Henry

County, qualifies as "excess proceeds" under OCGA § 48-8-121 (g) (1) (B), and therefore, is required to be used to reduce ad valorem taxes. See OCGA § 48-8-121 (g) (2).[1] The strained analysis of the majority completely nullifies the statutory provision and deprives the taxpayers of the rightful reduction of their tax burden.

OCGA § 48-8-121(g)(1)(B) plainly defines "excess proceeds" as net tax proceeds "in excess of the maximum cost of the project or projects stated in the resolution or ordinance calling for the imposition of the tax *or* in excess of the actual cost of such project or projects." (Emphasis supplied.) The statute is not ambiguous. As the majority acknowledges, the statutory language is in the disjunctive, and the well-settled meaning of the connective "or" is that it presents an alternative choice, that is, an election of one of two things. *Gearinger v. Lee*, 266 Ga. 167, 169 (2) (465 S.E.2d 440) (1996); *Ga. Paper Stock Co. v. State Tax Bd.*, 174 Ga. 816, 819 (164 SE 197) (1932). "[W]hen the language of a statute is plain and unambiguous, judicial construction is forbidden. *Six Flags Over Ga. v. Kull*, 276 Ga. 210, 211 (576 S.E.2d 880) (2003)." *Jennings v. McIntosh County Bd. of Comm'rs*, 276 Ga. 842, 845 (3) (583 S.E.2d 839) (2003). Yet, the majority takes it upon itself to reconstruct the statute in order

---

[1] OCGA § 48-8-121 (g) (2) provides:

Excess proceeds subject to this subsection shall be used solely for the purpose of reducing any indebtedness of the county other than indebtedness incurred pursuant to this article. If there is no such other indebtedness or, if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall then next be paid into the general fund of the county, it being the intent that any funds so paid into the general fund of the county be used for the purpose of reducing ad valorem taxes.

to avoid what it characterizes as the "anomalous result that the County cannot use available SPLOST revenues to complete those very projects for which the tax was expressly proposed, approved[,] and imposed." But the majority's reasoning is the anomaly.

The statute provides that there are "excess proceeds" in two instances - when the net tax revenues exceed the maximum cost of the project or projects specified in the resolution or ordinance, or when these revenues exceed the actual cost of such project or projects. The majority scoffs at the estimated cost component of the statute and focuses solely on the fact that certain projects funded by the SPLOST remain uncompleted. Yet it is the estimated cost, in this case $60 million, that is proposed and presented to the taxpayers for their approval. And it is this estimated cost that the General Assembly has clearly determined to be one of two yardsticks by which to measure "excess proceeds" under OCGA § 48-8-121(g)(1)(B).

Even if the forthright language of the statute could be characterized as ambiguous, and thus susceptible of judicial construction, basic rules of statutory construction will produce the same result. This Court must give a sensible and intelligent effect to each part of the statute. It cannot be presumed that the legislature intended that any part of a statute would be without meaning and mere surplusage. *Transportation Ins. Co. v. El Chico Restaurants*, 271 Ga. 774, 776 (524 S.E.2d 486) (1999); *Brown v. Liberty Co.*, 271 Ga. 634, 635 (522 S.E.2d 466) (1999). What is more, the cardinal rule of statutory construction is to ascertain the intent of the General Assembly. *Kemp v. City of Claxton*, 269 Ga. 173, 175 (1) (496 S.E.2d 712) (1998). A stated purpose of Ga. L. 1994, p. 1668, applicable to the SPLOST in this case is "to change certain provisions regarding the expenditure of

excess proceeds." *Id.* at 1669. This demonstrates the clear legislative intent that "excess proceeds" can exist in the two instances specified in OCGA § 48-8- 121(g)(1)(B).

Last, but certainly not least, the majority's decision works a grave injustice to the taxpayers of Henry County. The result is that the burden of the uncompleted county projects is shifted to the unwitting taxpayer, rather than holding the taxing authority accountable for a seemingly unrealistic assessment of cost and/or project scope. It forces the taxpayers of Henry County to fund county projects in an amount which was never disclosed, and certainly never approved by them. In the final analysis, it is simply that the taxing authority should say what it means and mean what it says. The taxpayers deserve no less.

I am authorized to state that Presiding Justice Sears and Justice Thompson join in this dissent.

APPENDIX D

IN THE SUPERIOR COURT OF HENRY COUNTY
HENRY COUNTY, GEORGIA

CIVIL ACTION FILE NO. 02-CV-1883-M

[Filed March 31, 2003]

JAMES L. HAUGEN, Plaintiff,	)
vs.	)
HENRY COUNTY, GEORGIA, a Political Subdivision; LELAND MADDOX, WARREN HOLDER, GARY M. FREEDMAN, JASON HARPER, GERRY ADAMS, and LEE HOLMAN, Individually and as members of the Board of Commissioners of Henry County, Georgia, Defendants.	)

HENRY COUNTY'S PROPOSED ORDER GRANTING JUDGMENT AS A MATTER OF LAW IN FAVOR OF DEFENDANTS

Plaintiff James L. Haugen filed this mandamus action against Defendants alleging that Defendants have refused or failed to perform their ministerial duties with respect to a

Special Purpose Local Option Sales Tax ("SPLOST") as authorized by OCGA §§ 48-8-110 *et seq.* The SPLOST was imposed pursuant to a resolution calling for submission to the voters for approval of a referendum; the resolution provided that the SPLOST would be used for various specified purposes - including road, street, and bridge purposes, as well as capital outlay projects for the use and benefits of the citizens of Henry County, including library facilities and expansion and renovation of the Henry County Courthouse. The SPLOST has generated approximately $71.8 million in net proceeds for Henry County. With accumulated interest, the total amount in the SPLOST account was approximately $76.4 million as of May 30, 2002.

Plaintiff ultimately contends that Defendants are not permitted to spend $11,877,176— the amount of proceeds received above the $60 million identified in the resolution— of the total amount raised by the SPLOST for the purposes outlined in the resolution. For the reasons stated below, the Court grants judgment as a matter of law in favor of Defendants.

I. FINDINGS OF FACT

On August 5, 1996, Henry County, Georgia passed Resolution No. 96-14 (the "Resolution"), pursuant to which the Board of Commissioners of Henry County proposed a SPLOST to be used and expended for: (1) "[r]oad, street, and bridge purposes;" and (2) "capital outlay projects for the use and benefits of the citizens of the entire county," including "library facilities, parks and recreational facilities; expansion and renovation of the Henry County courthouse, including a parking deck; senior citizens activities centers including administrative space, a center for the training of the developmentally disabled; an addition to the Henry County,

jail; fire stations, and a performing arts center." (Resolution, ¶¶ 3(a), 3(b).)

The Resolution provided that the "duration of the sales and use tax imposed hereby shall be five calendar years" and that the "maximum cost of the projects which will be funded from the proceeds of the tax . . . shall be sixty million dollars." *(Id.,* ¶¶ 2, 5.) In addition, the Resolution specifically provided:

> If the county receives from the tax net proceeds in excess of the maximum cost of the projects stated in this resolution or in excess of the actual cost of such projects, then such excess proceeds shall be used solely for the purpose of reducing any indebtedness of the county other than bonded indebtedness and, if there is no such other indebtedness; or if the excess proceeds exceed the amount of any such other indebtedness, than the excess proceeds shall next be paid into the general fund of the county and shall be used for the purpose of reducing *ad valorem* taxes.

(*Id.*, ¶ 8.)

The Resolution was presented for approval to the county voters at an election on September 17, 1996. *(Id.,* ¶ 6.) The referendum ballot provided:

> Shall a special 1 percent sales and use tax be imposed in Henry County for a period not to exceed five years and for the raising of not more than $60,000,000 for road, street, and bridge purposes and for the purposes of capital outlay projects for the use and benefit of the citizens of the entire county consisting of library facilities; parks and recreational facilities; expansion

> and renovation of the Henry County courthouse, including a parking deck; senior citizens activities centers, including administrative space; a center for the training of the developmentally disabled; an addition to the Henry County jail; fire stations; and a performing arts center?

(Id., ¶ 6.) The referendum was held, and more than one-half of the votes favored imposing the SPLOST.

Prior to the Resolution, a study committee was formed to designate the projects to be included in the SPLOST referendum. (Affidavit of Ed Wallace ("Wallace Aff."), ¶ 3.) The SPLOST referendum was prepared and formulated based on the designated projects. (Wallace Aff., ¶¶ 4, 5.) Once prepared and formulated, the designated projects were disseminated to the voters for their review and inspection prior to the vote on the SPLOST referendum. (Wallace Aff., ¶ 6.) Upon approval by the voters, the designated projects became the projects listed in the SPLOST budget and account reports. (Wallace Aff., ¶¶ 7-11; Affidavit of Jerry Brooks ("Brooks Aff."), ¶¶ 5-7.)

Between March 1997 and April 2002, the tax generated approximately $71,877,176 in net proceeds, approximately $11.8 million more than the amount specified in the Resolution. With accumulated interest, the total amount in the SPLOST account was approximately $76.4 million as of May 30, 2002. As of October 22, 2002, approximately $60 million of the funds generated through the SPLOST had been spent on the projects defined in the Resolution and, as of that same date, numerous projects remained uncompleted and/or are ongoing, including parks and recreational facilities, library facilities, road and street projects, and the expansion and renovation of the Henry County Courthouse. (Brooks Aff., ¶¶

8, 9; Wallace Aff., ¶¶12, 13.) It is estimated that it will cost approximately $27.5 to $27.9 million to complete the road and street paving projects alone. (Brooks Aff., ¶ 10) Defendants intend to expend all of the remaining SPLOST funds on uncompleted or ongoing projects identified in the Resolution.

II. PROCEDURAL POSTURE

Plaintiff filed a mandamus action seeking to compel Defendants to perform what Plaintiff alleges as Defendants' statutory, or lawful duty with respect to the $11.8 million of additional funds received through the SPLOST— that is, funds in excess of the $60 million identified in the Resolution— on the projects specified in the Resolution. A hearing was set for October 4, 2002. Prior to the hearing, Plaintiff added a claim for injunctive relief seeking to prevent Defendants from spending the approximate $11.8 million prior to resolution by this Court of the claims presently before it.

At the hearing, Defendants moved to dismiss. Defendants argued that Plaintiff's action was barred because a mandamus nisi had not been granted or served and the mandamus hearing had not occurred within the period specified in the statute. Defendants also argued that further expenditure of the SPLOST proceeds on the projects identified in the Resolution is permissible under OCGA 48 -8-121 (g) (1) (B) because the net proceeds of the tax is not "in excess of the actual cost of such project," which currently is ongoing. Defendants argued that, as a result, Defendants are under no statutory or other duty to use any of the proceeds for ad valorem tax reduction.

III. CONCLUSIONS OF LAW

A. Plaintiff's Petition for Mandamus Is Dismissed With Prejudice for Failure to Obtain a Mandamus Nisi.

At the time of service of Plaintiff's petition, no mandamus nisi was granted and served upon any of the Defendants, nor has one been granted and served upon any of the Defendants through the present time. Pursuant to OCGA § 9-6-27(a) and relevant case law, Plaintiff's Petition for Mandamus therefore must be dismissed. *See Inquiry Concerning a Judge*, 265 Ga. 326 (1995) (noting that the procedures for notice and hearing under OCGA § 9-6-27 are required).

B. Plaintiff's Claims Fail As a Matter of Law.

Even if Plaintiff properly complied with the procedures required in a mandamus action, Plaintiff's claims nonetheless fail as a matter of law. Plaintiff argues that this case involves "excess proceeds," as that term is used in OCGA § 48-8-121(g)(1)(B), and therefore that such proceeds in excess of $60 million must be used to offset ad valorem taxes.

OCGA § 48-8-121(g)(1)(B) provides:

> If the county receives from the tax net proceeds in excess of the maximum cost of the project or projects stated in the resolution or ordinance calling for the imposition of the tax or in excess of the actual cost of such project or projects, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection.

Based on this statutory language and the language of the Resolution, Plaintiff argues that "excess proceeds" exist in the amount of $11,877,176 — that is, the amount of proceeds generated above the $60 million originally specified in the Resolution. Plaintiff therefore argues that Defendants may not use the alleged "excess proceeds" to fund uncompleted projects specified in the Resolution, but instead must deposit the entire $11.8 million to the County's general fund. Plaintiff further contends that the language of the 1996 Resolution requires the current Board of commissioners to use that money to reduce ad valorem taxes in Henry County, and that the Commissioners have no discretion in the matter.

At the outset, this Court notes that the law grants to the Board of Commissioners of Henry County broad discretion in managing the affairs of the County, particularly with respect to the expenditure of tax dollars. *See Dickey v. Storey*, 262 GA. 452, 454 (1992). Absent clear abuse of such discretion, the courts will not interfere in County business affairs. *Id.* This Court finds no evidence that the Board of Commissioners of Henry County have abused its discretion to collect, manage, budget and spend the SPLOST proceeds.

In any event, Plaintiff s argument fails as a matter of law. First, Plaintiff' s argument flies in the face of the relevant statutory text. OCGA § 48-8-121(g)(1)(B) expressly defines "excess proceeds" as net proceeds in excess of "the actual cost of [the] project or projects [stated in the resolution or ordinance calling for the imposition of the tax]." Here, however, the "actual cost" of the projects has not been fully realized, as the projects are not yet complete and are currently ongoing. (Brooks Aff., ¶¶ 8, 9; Wallace Aff., ¶¶12, 13.) Any claim that "excess proceeds" exist is refuted by the undisputed facts in this case — which show that the cost of the projects identified in the Resolution far exceeds the $72

million collected in SPLOST proceeds and therefore that there can be no "excess proceeds" — and must be rejected.

In addition, contrary to Plaintiff's contentions, Plaintiff's argument is not advanced by the fact that the Resolution specified $60 million as the "maximum" amount sought to be raised by the SPLOST. The Georgia Supreme Court's opinions in *Jackson v. Shadix*, 272 Ga. 631 (2000) — in which the Supreme Court expressly permitted the county to collect SPLOST proceeds beyond the amount identified in the referendum — and *Shadix v. Carroll County*, 274 Ga. 560 (2001) " in which the Supreme Court expressly permitted the county to spend SPLOST proceeds beyond the amount specified in the referendum — are dispositive and compel the conclusion that Defendants are permitted to spend any SPLOST proceeds in excess of the stated amount to the extent those proceeds are collected during the time period identified in the Resolution. Defendants therefore are entitled to expend for SPLOST purposes all of the SPLOST proceeds generated during the relevant five year period, even if those proceeds exceed the amount identified in the Resolution.

Plaintiff's position is further undermined by the Supreme Court's opinion in *Dickey v. Storey*, 262 Ga. 452 (1992). There, the Supreme Court expressly held that the county board of Commissioners "is bound . . . to complete all projects listed in" the SPLOST budget and account reports and that the board "may not abandon the projects altogether." *Id.* at 456. But that is precisely what Plaintiff has asked this Court to direct, in seeking to prevent Defendants from expending the additional SPLOST funds on unfinished projects identified in the SPLOST reports, Plaintiff has asked this Court to enter an order that would directly conflict with the express holding in *Dickey*. *(See* Wallace Aff., ¶¶ 12, 13; Brooks Aft., ¶¶ 13, 14, 15,)

The SPLOST is by its terms a "special" tax that may be imposed only for "special purposes" which are defined by statute and which are required to be specifically described in the ballot question. See OCGA §§ 48-8-111, 48-8-121. It is inconceivable to this Court that the General Assembly would permit the County to collect SPLOST proceeds 'for the County's general fund purposes when the specific purposes approved by the voters remain unfinished. Because SPLOST proceeds are available to complete at least some of the remaining projects, the Court must deny Plaintiffs request for relief and grant judgment as a matter of law in favor of Defendants.

Because Plaintiff's claims on the merits fail as a matter of law, this Court also denies Plaintiff's request for injunctive relief.

IV. CONCLUSION

In accordance with the foregoing discussion, the Court grants JUDGMENT AS A MATTER OF LAW in favor of Defendants, and Plaintiff' s claims are hereby DISMISSED WITH PREJUDICE.

SO ORDERED, this 13 day of March, 2003.

/s/

L.A. McCONNELL, JR. SENIOR JUDGE
SUPERIOR COURT JUDGE

Presented by:
Michael A. O'Quinn
O'Quinn & Cronin
21 Sims Street
McDonough, GA 30253
770.898.0333
Fax: 770.898.0330
Georgia Bar No.: 553056